

## EXHIBIT B

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

In re:  
USA SECURITIES, LLC,  
Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases Under  
Case No. BK-S-06-10725-LBR

Judge Linda B. Riegle

**DECLARATION OF GEOFFRY L.  
BERMAN IN SUPPORT OF  
MOTION FOR APPROVAL OF  
SETTLEMENT PURSUANT TO  
RULE 9019 OF THE FEDERAL  
RULES OF BANKRUPTCY  
PROCEDURE**

Hearing Date: \_\_\_\_\_  
Hearing Time: \_\_\_\_\_

1 Geoffrey L. Berman, as Trustee of the USACM Liquidating Trust, hereby declares the  
2 following under penalty of perjury:

3 1. I am an adult person competent to testify in court. I make the following  
4 statements based upon my personal knowledge except where otherwise indicated. I am  
5 submitting this declaration in support of the Motion for Approval of Settlement Pursuant to Rule  
6 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion"), seeking entry of an order  
7 approving the Settlement Agreement, Mutual Release, and Covenants between the USACM  
8 Liquidating Trust (the "USACM Trust") on the one hand, Joseph D. Milanowski  
9 ("Milanowski"), on the other hand.

10 2. I am the Trustee of the USACM Trust, which was created pursuant to the  
11 Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Joint Plan"), which was  
12 filed by USA Commercial Mortgage Company ("USACM"), USA Capital Diversified Trust  
13 Deed Fund, LLC ("DTDF"), and certain affiliated companies and subsidiaries. The Joint Plan  
14 was confirmed by this Court on January 8, 2007, and then became effective on March 12, 2007.

15 3. On March 28, 2008, the USACM Trust commenced adversary proceeding number  
16 08-01093, entitled *USACM Liquidating Trust v. Joseph D. Milanowski* (the "USACM Trust  
17 Non-Dischargeability Litigation"), in Milanowski's Bankruptcy case, pending before the  
18 Bankruptcy Court as petition number 07-013162 (the "Milanowski Bankruptcy Case"). In the  
19 USACM Trust Non-Dischargeability Litigation, the USACM Trust asserted claims seeking to  
20 determine the non-dischargeability of Milanowski's debt to the USACM Trust pursuant to 11.  
21 U.S.C. § 523(a).

22 4. On October 22, 2010, I participated in a settlement conference with the USACM  
23 Trust's counsel and Milanowski (through counsel), as well as DTDF (through counsel), and  
24 August Landis, Acting U.S. Trustee for Region 17. Following extensive arms-length  
25 negotiations, the USACM Trust reached an agreement to resolve the USACM Trust Non-  
26 Dischargeability Litigation subject to approval by the Bankruptcy Court under Federal Rule of  
Bankruptcy Procedure 9019.

1           5.       The USACM Trust and Milanowski have memorialized their agreement as part of  
2 a global settlement by executing the Settlement Agreement, Mutual Release, and Covenants (the  
3 "Proposed Settlement Agreement"), a true and correct copy of which is attached to the Motion as  
4 Exhibit "C." The material terms of the Proposed Settlement Agreement, as such terms relate to  
5 the USACM Trust, are summarized below:

- 6           a.       **Agreed Judgment.** Milanowski will agree to a judgment in the amount of  
7 Five Million Dollars (\$5,000,000.00) in favor of the USACM Trust and  
8 DTDF. Milanowski agrees that the judgment will not be dischargeable in  
9 the Milanowski Bankruptcy Case. DTDF will share in the settlement as a  
10 beneficiary of the USACM Trust and as otherwise outlined in the  
11 agreement between the USACM Trust and DTDF filed with the Court on  
12 March 13, 2008.
- 13           b.       **Bankruptcy Court Approval.** The Proposed Settlement Agreement is  
14 contingent upon this Court's approval of the settlement under Rule 9019  
15 of the Federal Rules of Bankruptcy Procedure.
- 16           c.       **Mutual Release.** Upon the Court's approval of the settlement and the  
17 execution and entry of the USA Capital Agreed Judgment, the USACM  
18 Trust and Milanowski will exchange full mutual releases as to all claims  
19 that they ever had, now have, or may at any future time have against each  
20 other.
- 21           d.       **Cooperation.** Milanowski will cooperate with the USACM Trust and  
22 DTDF in connection with *USA Capital Diversified Trust Deed Fund, LLC*  
23 *v. Thomas A. Hantges*, pending as adversary proceeding number 08-01041  
24 in the Bankruptcy Court and *USACM Liquidating Trust v. Thomas A.*  
25 *Hantges*, pending as adversary proceeding number 08-01042 in the  
26 Bankruptcy Court.

19           6.       Although I believe that the claims in the USACM Trust Non-Dischargeability  
20 Litigation have substantial merit and evidentiary support, there is no guarantee or certainty that  
21 the USACM Trust would be successful in prosecuting its claims. In particular, it is my  
22 understanding that the USACM Trust's claims are dependent upon a finding of actual  
23 fraudulent intent on the part of Milanowski. While I believe such a finding would possibly be  
24 made, there is no certainty to this point.

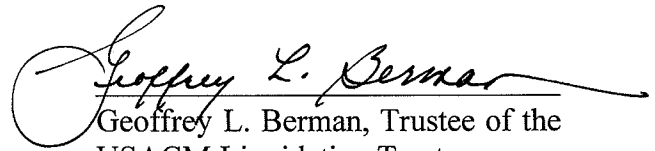
1           7. Even if the USACM Trust were to prevail in the litigation, it would face  
2 virtually insurmountable obstacles in collecting a meaningful portion of any judgment obtained  
3 against Milanowski. Currently, Milanowski has virtually no assets, as is evident from the  
4 proceedings in the Milanowski Bankruptcy Case, including the settlement negotiated between  
5 Mr. Milanowski and his Chapter 11 trustee. Further, Milanowski is currently serving a twelve  
6 (12) year sentence in federal prison and has a non-dischargeable obligation to pay \$86.9 million  
7 in restitution pursuant to that Criminal Judgment. Mr. Milanowski will have no means of  
8 income while in prison, and his prospects of earning significant income upon his release will be  
meager at best as a convicted felon nearing retirement age.

9           8. It is my belief that further litigation against Milanowski would be complex and  
10 costly. The claims against Milanowski would require discovery into virtually the entire history  
11 of USACM from 2000 to 2006, likely necessitating dozens of depositions and significant  
12 analysis of a myriad of complex financial transactions. The USACM Trust would also likely  
13 need to retain expert witnesses. Finally, the USACM Trust would face a costly and protracted  
14 trial of this case, a case involving complex financial transactions spanning a six-year period of  
time.

15           9. In summary, the Proposed Settlement Agreement is in the paramount interest of  
16 the creditors and other beneficiaries of the USACM Trust. The USACM Trust Agreed  
17 Judgment is substantial, especially in light of the fact that the agreed upon amount of \$5 million  
18 is likely far in excess of what Milanowski will ever actually be able to pay to the USACM  
19 Trust. Similarly, the costs of additional litigation against Milanowski would likely exceed the  
20 maximum amount that Milanowski will ever be able to pay to the USACM Trust. Finally, the  
21 Proposed Settlement Agreement will help ensure that Milanowski provides truthful testimony  
in connection with other ongoing litigation.

1 I declare under perjury that the foregoing is true and correct.

2 Executed on January 13, 2011 in Los Angeles, California

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5 Geoffrey L. Berman, Trustee of the  
6 USACM Liquidating Trust  
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